1903
March 3.

Before Mr. Justice Knox and Mr. Justice Aikman.

SURAJMANI AND OTHERS (DEFENDANTS). *v* RABI NATH AND OTHERS (PLAINTIFFS).*

Hindu law—Mitakshara—Property given or devised to wife by husband—Widow's powers of alienation.

Held that under the Hindu law, in the case of immovable property given or devised by a husband to his wife, the wife has no power to alienate unless such power is conferred in express terms. *Jeewun Pundit* v. *Mussumat Sona* (1), *Moulvie Mahomed Shumsool Hooda* v. *Shewuk Ram* (2), *Janki* v. *Bhairon* (3), and *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* (4) referred to.

THE suit out of which this appeal arose was brought by Rabi Nath Ojha and Gangadhar Ojha. The suit was for a declaration that one Musammat Surajmani was incompetent to transfer certain immovable property set out in the plaint, and that a will which had been executed by the said Musammat Surajmani on the 19th of March, 1898, was invalid so far as the plaintiffs were concerned. Musammat Surajmani was the widow of one Iswar Nath Ojha. Iswar Nath Ojha on the 2nd of April 1887, had executed a document purporting to be a deed of gift to take effect after his death, whereby he transferred certain properties in favour of each of his two wives Surajmani and Dhanmati, and also in favour of his daughter-in-law Musammat Sarsuti. The main issues raised in the suit were whether the plaintiffs were the nearest reversioners to Iswar Nath Ojha, and what powers of alienation, if any, were possessed by the widow Surajmani. The Court of first instance (Officiating Subordinate Judge of Gorakhpur) found in favour of the plaintiffs on both these issues and decreed the claim. Against this decree the defendants appealed to the High Court.

Pandit *Sundar Lal* and Pandit *Madan Mohan Malaviya*, for the appellants.

Babu *Jogindro Nath Chaudhri* and Pandit *Moti Lal Nehru*, for the respondents.

KNOX and AIKMAN, JJ.—This appeal arises out of a suit brought by Rabi Nath Ojha and Gangadhar Ojha. The relief that they claimed was, that it should be declared that Musammat Surajmani, the first defendant, was incompetent to transfer

* First Appeal No. 106 of 1901, from a decree of Babu Anant Prasad, Subordinate Judge of Gorakhpur, dated the 11th of March 1901.

(1) (1869) N.-W. P., H. C. Rep., 1869, p. 66.
(2) (1874) L. R., 2 I. A., 7.
(3) (1896) I. L. R., 19 All., 133.
(4) (1897) I. L. R., 24 Calc., 834.

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certain immovable property set out in the plaint, and that a will that had been executed by the said Musammat Surajmani on the 19th of March, 1896, was invalid, so far as the plaintiffs were concerned. Musammat Surajmani was the widow of one Iswar Nath Ojha. Iswar Nath Ojha, on the 2nd of April, 1877, had executed a document, purporting to be a deed of gift, to take effect after his death, whereby he transferred certain properties in favour of each of his two wives Musammat Surajmani aforesaid and Musammat Dhanmati, and also in favour of his daughter-in-law Musammat Sarsuti. We are not concerned with the property conveyed to Musammat Dhanmati and Musammat Sarsuti. The whole case in this appeal turns upon the answer to the question whether Musammat Surajmani, who now professes to alienate the property which had been conveyed to her, had or had not such power of alienation. There were other pleas contained in the memorandum of appeal, but none of those pleas were urged before us.

We have first to consider the document by which the property was conveyed to Musammat Surajmani, and to see whether under it Musammat Surajmani had acquired any interest capable of alienation by her. This document will be found at page 1 of the appellant's book, and the following words are the important words which we have to consider :—"After my death they shall under this document get their names recorded in the public records in respect of the respective properties given to them, and remain in possession as owners with proprietary powers." On turning to the original we find the actual words used are the words "Malik wa khud ikhtyar." The executant further provides that "should he have a male issue hereafter, the deed of gift shall be considered null and void as against him." The Court below after considering the authorities cited to it came to the conclusion that the words we have set out above did not convey an alienable estate in favour of Musammat Surajmani. We have listened to an able and well-sustained argument by the learned vakil who appears for the appellants: after we have heard all he had to argue in support of the opposite view, we have arrived at the conclusion that the judgment of the Court below must be sustained.

To begin with what is laid down upon the subject in the Mitakshara, Chapter I, Part II, Section 1, Placitum 20. We find it there stated—"What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or may give it away, excepting immovable property." This authority is clearly in favour of the view taken by the lower Court. The learned vakil contended that, in view of what had been laid down, not only by this Court but by other Courts, that rule of the Mitakshara was no longer a binding authority. To this contention we are unable to accede. We find that Mr. Mayne, in the latest edition of his Hindu Law and Usage, at page 865, says:—"Immovable property, when given or delivered by a husband to his wife, is never at her disposal, even after his death. It is stridhanum so far as it passes to her heirs, not to his heirs. But as regards her power of alienation, she appears to be under the same restrictions as those which apply to property which she has inherited from a male, even though the gift is made in terms which create a heritable estate. Of course it is different if the gift or devise is coupled with an express power of alienation." To the same effect is a passage at page 333 of the Tagore Law Lectures, 1878. We have carefully examined the authorities cited to us and also others, and we find that the summary contained in Mr. Mayne's work is in full accordance with what has been laid down in the decided cases. One of the earliest authorities of this Court is the case of *Jeewun Punda* v. *Mussumat Sona* (1). The learned Judges who decided that case stated, as we think, the law on the subject very clearly. They say that "if a Hindu make a gift of land to his wife without any express power of alienation, it may well be contended that he does so, knowing that, under the law, she takes no interest which she could aliene; if, on the other hand, he makes such a gift accompanied by an express power, it may be contended with even greater reason that, knowing the disability which by law would attach to a simple gift, he desired to clothe her with larger powers than those to which she would, by the operation of the law, be entitled." What is here said is in accordance

(1) (1869) N.-W. P., H. C. Rep., 1869, p. 6.

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with what their Lordships of the Privy Council said in the case of *Moulvie Mahomed Shumsool Hooda* v. *Shewuk Ram* (1). They held that "it may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate." We would also refer to the case of *Janki* v. *Bhairon* (2) where the passage above quoted from Mr. Mayne's book is cited with approval. The learned vakil for the appellants strongly pressed us with the case of *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy* to be found in the Indian Law Reports, 24 Calcutta, at p. 834. That case does not appear to us to be relevant to the issue which we have to decide. The case that was then before their Lordships of the Privy Council was the case of a bequest to a male relative, which would be governed by considerations entirely different from those applicable to the case before us. We hold that under the Hindu law as interpreted up to the present in the case of immovable property given or devised by a husband to his wife, the wife has no power to alienate, unless the power of alienation is conferred upon her in express terms. The learned vakil for the appellants contended that the words of the document we have to consider, and that we have cited above, did expressly convey such power, or at any rate that from them the intention of the executant to confer a power of alienation was evident. We cannot so hold. We do not think that the words are any stronger than similar words to be found in the cases cited to us. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

(1) (1874) L. R., 2 I. A., 7, at p. 15.

(2) (1896) I. L. R., 19 All., 133, at p. 135.